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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

PH.

D.A.No. 1527/88

Dated: 20.10.1993

*Constituted  
P.K. Sen Gupta  
J.K.  
P.K. Sen Gupta  
J.K.  
S. K. Aggarwal  
19.10.88  
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P.K. Sen Gupta

Applicant

Vs.

Union of India, G.M., N. Rly.

Respondents.

Present: Shri Umesh Mishra counsel for the applicant

Shri S.K. Aggarwal counsel for the respondents.

CORAM

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT (ORAL)

(Delivered by Hon'ble Mr. J.P. Sharma, Member (J)

The grievance of the applicant is that he joined as Fitter in Railways with effect from October 30, 1977 in the grade Rs. 260-400. He fell ill suddenly and had been informing the respondents to grant him leave and he went to join with the fitness certificate dated 14.10.1985 on 6th November, 1985. The applicant was directed to contact the Assistant Engineer, Tuglakabad but he was not allowed to join having been told that no post is available to him. The applicant reported the matter to the D.R.M. Office, New Delhi and he was informed that in due course of time he will be intimated about his joining, place of working etc. When the applicant did not receive any communication from the respondents, D.R.M. Office, he sent a demand letter on 25th January 1988 (annexure B). The applicant did not get any reply and filed the present application on 16.8.88 praying for grant of relief that the respondents be directed to take the applicant on duty and further

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direction for payment of back wages with the continuity of service and seniority in the post he held, i.e. Fitter, before his illness.

2. A notice was issued to the respondents who contested the application by filing the reply and opposed the grant of relief on the ground that the application is barred by laches and delay. They further stated that the applicant did not resume his duties as Fitter before the A.E.N., Tuglaqabad, New Delhi after he proceeded on leave from 24.7.82 to 18.8.82. The A.E.N. Tuglaqabad was informed by the letter dated November 6, 1985 by I.O.W., Tuglaqabad that the applicant has been continuously absent for about 39 months and that now he wants to join duty when there is no post sanctioned against which he can be given duty. Thereafter the applicant did not report for duty.

3. We have heard the learned counsels for the parties at length and perused the record. From the various annexures filed by the respondents, it is evident that the applicant was informed in 1983 to resume his duty on his being absent after obtaining sanctioned leave from 24th July 1982 to 18th August 1982. The applicant did not report for duty. It is correct that the applicant reported for duty to I.O.W., Tuglaqabad on 6.11.85 but he could not be given a posting because one Shri Raja Ram was put as a Fitter after passing the trade test. Further, the fact that the applicant after November 1985 went into hibernation and awoke only in January 1988 that too by giving a demand notice after remaining absent from duty for many years. The learned counsel for the applicant argued that the services of the applicant could not have been ceased in any case otherwise than by following the procedure prescribed under Railway Discipline and Appeal Rules 1968. It is further argued that the applicant has arrived. There can be no ~~two~~ opinion on this proposition but

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by delay, laches a right as well as remedy available under law are lost. We are fortified in our view by the authority of the Hon'ble Supreme Court in Ratanchandra Samanta Vs. Union of India in Judgment Today 1993 Volume 3 page 418. At this stage the learned counsel for the applicant says that he would like to prefer the remedy, if any available, under the Industrial Disputes Act, 1947. We have no comments in this regard. As regards this application, this is barred by time, delay and laches and is therefore dismissed leaving the parties to bear their own costs.

( B.K. Singh )  
Member (A)

J. P. Sharma  
Member (J)

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